

**TITLE 3            TAXATION**  
**CHAPTER 4        CORPORATE INCOME TAXES**  
**PART 16           SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS**

**3.4.16.1            ISSUING AGENCY:** Energy, Minerals and Natural Resources Department.  
[3.4.16.1 NMAC - N, 10-31-07]

**3.4.16.2            SCOPE:** 3.4.16 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable residential buildings.  
[3.4.16.2 NMAC - N, 10-31-07]

**3.4.16.3            STATUTORY AUTHORITY:** 3.4.16 NMAC is established under the authority of NMSA 1978, Section 7-2A-21 and NMSA 1978, Section 9-1-5.  
[3.4.16.3 NMAC - N, 10-31-07]

**3.4.16.4            DURATION:** Permanent.  
[3.4.16.4 NMAC - N, 10-31-07]

**3.4.16.5            EFFECTIVE DATE:** October 31, 2007, unless a later date is cited at the end of a section.  
[3.4.16.5 NMAC - N, 10-31-07]

**3.4.16.6            OBJECTIVE:** 3.4.16 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings.  
[3.4.16.6 NMAC - N, 10-31-07]

**3.4.16.7            DEFINITIONS:**

**A.** "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.

**B.** "Applicant" means a taxpayer that owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

**C.** "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

**D.** "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

**E.** "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

**F.** "Certification" means build green New Mexico certification, LEED certification or energy star qualified.

**G.** "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

**H.** "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

**I.** "Department" means the energy, minerals and natural resources department.

**J.** "Division" means the department's energy conservation and management division.

**K.** "Energy reduction requirements" means the sustainable residential building has achieved a HERS index of 60 or lower.

**L.** "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.

**M.** "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.

**N.** "HERS" means home energy rating system as developed by RESNET.

- O.** “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.
  - P.** “LEED” means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.
  - Q.** “LEED certification” means the verification by the U. S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.
  - R.** “LEED-H” means the LEED rating system for homes.
  - S.** “Manufactured housing” means a multisectioned home that is:
    - (1) a manufactured home or modular home;
    - (2) a single-family dwelling with a heated area of at least thirty-six feet by twenty feet and a total area of at least eight-hundred sixty-four square feet;
    - (3) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit’s construction; and
    - (4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.
  - T.** “Person” does not include state, local government, public school district or tribal agencies.
  - U.** “Qualified occupied square footage” means the occupied spaces of the building as determined by:
    - (1) the United States green building council for those buildings obtaining LEED certification;
    - (2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or
    - (3) the United States environmental protection agency for energy star certified manufactured homes.
  - V.** “Rating system” means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.
  - W.** “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.
  - X.** “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.
  - Y.** “Sustainable building tax credit” means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.
  - Z.** “Sustainable residential building” means:
    - (1) a building used as a single-family residence that meets the energy reduction requirements and has been awarded:
      - (a) LEED-H certification at the certification level of silver, gold or platinum; or
      - (b) build green New Mexico certification at the gold certification level; or
    - (2) an energy star qualified manufactured home.
  - AA.** “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq.*
  - BB.** “Taxpayer” means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*
  - CC.** “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.
  - DD.** “Verifier” means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.
- [3.4.16.7 NMAC - N, 10-31-07; A, 1-1-14]

**3.4.16.8 GENERAL PROVISIONS:**

- A.** A person is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.
- B.** The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$4,000,000. When the \$4,000,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect; or

(3) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than \$1,250,000 of the \$4,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.4.16 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.16 NMAC's adoption, the existing rule governs.

[3.4.16.8 NMAC - N, 10-31-07; A, 1-1-14]

### **3.4.16.9 VERIFIER ELIGIBILITY:**

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as

necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant

information the department may request; and

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.16.9 NMAC - N, 10-31-07]

### **3.4.16.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:**

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

**B.** An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

**C.** The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the applicant's authorized representative;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the sustainable residential building, including the property's legal description;
- (5) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (6) the qualified occupied square footage of the sustainable residential building;
- (7) the rating system under which the sustainable residential building was certified;
- (8) the certification level achieved, if applicable;
- (9) the HERS index;
- (10) the date of rating system certification;
- (11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:
  - (a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;
  - (b) applicant has read the requirements contained in 3.4.16 NMAC;
  - (c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;
  - (d) applicant understands that there are annual caps for the sustainable building tax credit;
  - (e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and
  - (f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and
- (12) a project number the division assigns to the tax credit application.

**D.** In addition to the application form, the application package shall consist of the following information provided as attachments:

- (1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;
- (2) a copy of the rating system certification form;
- (3) a copy of the final certification review checklist that shows the points achieved, if applicable;
- (4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and
- (5) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.16.10 NMAC - N, 10-31-07; A, 1-1-14]

#### **3.4.16.11 APPLICATION REVIEW PROCESS:**

**A.** The department considers applications in the order received, according to the day they are received, but not the time of day.

**B.** The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

**C.** The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

**D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

**E.** If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years. [3.4.16.11 NMAC - N, 10-31-07; A, 1-1-14]

**3.4.16.12 CALCULATING THE TAX CREDIT:**

**A.** The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

<b>LEED-H silver or build green New Mexico silver:</b>	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
<b>LEED-H gold or build green New Mexico gold:</b>	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
<b>LEED-H platinum or build green New Mexico emerald:</b>	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
<b>energy star manufactured housing:</b>	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

**B.** An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

**C.** The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit. [3.4.16.12 NMAC - N, 10-31-07; A, 1-1-14]

**3.4.16.13 CLAIMING THE STATE TAX CREDIT:**

**A.** To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

**B.** If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

**C.** A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit

shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.4.16.13 NMAC - N, 10-31-07; A, 1-1-14]

**HISTORY OF 3.4.16 NMAC:** [RESERVED]